# The Report of

# The British Columbia Claims Task Force

**June 28, 1991**

91-06149/

# *British Columbia Claims Task Force*

June 28,1991

The First Nations of British Columbia
The Government of British Columbia
The Government of Canada

We are pleased to present the report of the British Columbia Claims Task Force.

The Task Force was created on December 3, 1990 by an agreement between representatives of First Nations in British Columbia, the Government of British Columbia and the Government of Canada. The terms of reference asked the Task Force to recommend how the three parties could begin negotiations and what the negotiations should include.

We are convinced that the process must be open, fair and voluntary. The result of the negotiations must be set down in modern treaties, the blueprints for a new relationship. Implementation of these treaties will require the commitment of all to bring about positive and lasting change in the political, social and economic structures of British Columbia.

*Chief Joe Mathias Mr. Miles G. Richardson Ms. Audrey Stewart Mr. Murray Coolican*
*Chief Edward John Mr. Tony Sheridan Mr. L. Allan Williams, Q.C.*
*Suite 2990–700 West Georgia Street, Vancouver, British Columbia V7Y 1B6 Tel: (604) 682-3345 Fax: (604) 682-3858*

The negotiations to build a new relationship between First Nations, British Columbia and Canada should begin as soon as possible.

We unanimously make these recommendations and urge you to implement them without delay.

Chief Joe Mathias

L. Allan Williams, Q.C.

Audrey Stewart

Miles G. Richardson

Tony Sheridan

Murray Coolican

Chief Edward John

# The Report of

# The British Columbia Claims Task Force

## ACKNOWLEDGEMENTS

We would like to extend our thanks to Paul Tennant and Gary Yabsley for their invaluable assistance in historical research and analysis and their contributions to the text of the report. To Nancy Morgan we express our gratitude for her persistent cheerfulness and careful assistance in the preparation of the report. Lori Davis is extended our wholehearted appreciation for her secretarial work and for coordination of major segments of the report. Finally, to Tom McKeown and Elaine Hornell for the general management and administration of the Task Force and the production of the final report.

## CONTENTS


| | | |
|---|---|---|
| **1.** | **INTRODUCTION** | 5 |
| | Historical Background | 5 |
| | New Relationship | 16 |
| **2.** | **SCOPE: What the Negotiations Should Include** | 21 |
| | First Nation Government | 22 |
| | Land, Sea, and Resources | 24 |
| | Financial Component | 26 |
| | Government Services | 27 |
| | Certainty | 28 |
| | Amendment | 29 |
| | Implementation | 30 |
| **3.** | **PROCESS: How the Negotiations Should Proceed** | 33 |
| | The British Columbia Treaty Commission | 36 |
| | Stages of Negotiation | 41 |
| | Access | 48 |
| | Organization of First Nations | 49 |
| | Overlapping Territories | 52 |
| | Timeframes | 53 |
| | Non-Aboriginal Interests | 54 |
| | Funding for Negotiations | 55 |
| | Ratification | 57 |
| | Dispute Resolution | 58 |
| | Negotiators | 59 |

**4. INTERIM MEASURES** 63

**5. PUBLIC INFORMATION AND EDUCATION** 67
Public Information 68
Public Education 69

**6. CONCLUSION** 71

**7. APPENDICES** 73
Appendix 1: Terms of Reference 73
Appendix 2: Members of the Task Force 75
Appendix 3: People With Whom the Task Force Consulted 78
Appendix 4: People and Organizations Who Made Written Submissions 79
Appendix 5: Issues in Framework Agreements to Date 80
Appendix 6: Recommendations 82

## 1. INTRODUCTION

The conflict over the rights of aboriginal peoples in British Columbia is not solely a product of our time. The dispute has its genesis in the early years of European settlement. It is a conflict that speaks to the difficulties in reconciling fundamentally different philosophical and cultural systems. Historically, the conflict has focused on rights to land, sea, and resources. However, the ultimate solution lies in a much wider political and legal reconciliation between aboriginal and non-aboriginal societies. Addressing the problem will require an appreciation of the historical relationship between aboriginal and non-aboriginal people, and an understanding of how this history has shaped the political and legal reality of today.

### Historical Background

Before the arrival of Europeans in British Columbia, the aboriginal societies lived as distinct and self-sufficient nations each having its own language, its own economy, its own system of law and government, and its own territory. Nations interacted through trade, social relations, sharing of resources, and, at times, warfare. Despite their diversity, the First Nations were broadly alike in having cultures and spiritual understandings that stressed tradition, community, and harmony with the natural environment.

During the decades following the first arrival of Europeans, the First Nations carried on a trading relationship as relative

equals with the itinerant newcomers. With minimal contact, there was little conflict. Colonization had not yet taken place. European diseases, which were to reduce the aboriginal population by eighty percent within one hundred years, had begun their deadly invasion. By their actions the foreigners accepted the domestic jurisdiction of the First Nations. For their part, the First Nations and their communities continued to be self-sufficient and self-governing, knowing the land and seas to be theirs.

From the earliest days of its presence in North America the British Crown pursued a policy, set out in the Royal Proclamation of 1763, that recognized aboriginal title. Aboriginal land ownership and authority was recognized by the Crown as continuing under British sovereignty. An effect of the policy was that only the Crown could acquire lands from First Nations, and only by treaty. By the 1850's, the Crown had signed major treaties with the First Nations in eastern Canada. Ultimately, that process continued west to the Rockies, in advance of European settlement. In most of these treaties First Nations ceded title to the Crown in exchange for substantial land reserves and other rights.

This policy was not pursued west of the Rockies. On Vancouver Island, the British Crown gave trading rights to the Hudson's Bay Company, and placed it in charge of immigration and settlement. Its chief factor, James Douglas, was instructed to purchase First Nations lands. He continued this policy after he became governor of the colony. In all, Douglas made fourteen

purchases on the island, known as the Douglas Treaties. When the mainland was made a colony in 1858, Douglas' instructions from London assumed that more treaties would be arranged, but left him to determine the course of events. Because of a shortage of funds, he arranged no further purchases.

Instead, Douglas offered to aboriginal people an opportunity to participate in the affairs of the colony similar to that offered to new settlers. Provided they took up the offer, which included the right to acquire Crown land and become farmers, individual aboriginal people were to be treated as equal to settlers. While Douglas' policy of equality had commendable features, it ignored the cultural reality and wishes of the aboriginal peoples, who were neither consulted nor involved in its creation. Aboriginal title and the inherent rights of aboriginal people were disregarded. Small reserves were created as protection from aggressive land acquisition by settlers. The colonists assumed that aboriginal people would leave their communities to acquire land elsewhere, abandon their traditional lifestyle, adopt farming as a way of life, and merge with the new society. This policy of assimilation guided the new colony.

In the decade following Douglas' retirement in 1864, many of his policies were reversed. The legislature of the united colony discriminated against aboriginal people, by removing their right to acquire Crown land. Officials grudgingly continued to create only small reserves. More significantly, the colony's officials affirmed that aboriginal title had never been acknowledged. No compensation was offered to the First Nations for the loss of traditional lands and resources. Regrettably, the

pattern of future relations between aboriginal and non-aboriginal British Columbians was established during this decade.

The colonial society was an immigrant society whose values were very different from those of the aboriginal peoples. The new society distrusted communal values, exalted the enterprising individual, favoured progress over tradition, and believed that the betterment of humankind lay not in harmony with nature but in its conquest and transformation. The British Columbia society saw itself as the successor of European explorers, who believed they had "discovered" an unknown, even empty, land that was free for the taking. Thousands of years of aboriginal habitation in the area were ignored. First Nations were accorded no place in colonial British Columbia. Individual aboriginal people were denied recognition, respect, dignity, and even the minimal opportunity that was implicit in the policy of assimilation.

When British Columbia joined Canada in 1871, aboriginal people, who were the majority of the population in British Columbia, had no recognized role in political decision-making. The Terms of Union made no mention of aboriginal title, but ensured provincial control over the creation of further Indian reserves. Canada assumed responsibility for "Indians and lands reserved for Indians". The government of British Columbia considered the "Indian land question" to have been resolved. Thereafter, it regarded the federal government as responsible for all matters pertaining to the aboriginal peoples.

## Introduction

With Confederation, the First Nations in British Columbia were subjected to federal control, notably to the constraints of the Indian Act. The "band" system of administration was imposed on First Nations and bands were made subject to detailed supervision by federal officials. The governments outlawed the great, traditional potlatches which were the heart of the First Nations' social and political system. Throughout the province, the authorities removed children from their families and communities, and placed them in residential schools. Separated from their families and their own society, forbidden to speak their own language, the children were to be educated as non-aboriginals. Inevitably, the persistent and growing exclusion from traditional lands, seas, and resources led to an increasing reliance upon federal support programs. These actions began a long decline into a state of dependency.

In spite of these policies, the traditional values, identities, institutions, and allegiances of the aboriginal peoples endured. In all their communities and councils there was the profound conviction that their hereditary title remained in effect, that no treaty or other lawful action had extinguished that title, and that newcomers needed to obtain First Nations' consent to their use of the land.

From the beginning there were complaints, protests and resistance from the aboriginal people as the reserves were laid out and as settlers took up land. Surprisingly, violence occurred only on occasion—as in 1864, when the Chilcotin sought to protect their territory from white settlers. Instead, from the early

stages many First Nations strongly desired to establish an equitable relationship with non-aboriginal governments and communities. Organized political action involving co-operation among neighbouring First Nations began in the 1870's among the Salish peoples. Similar action later emerged in other parts of the province, as the pressures upon traditional lands and livelihoods intensified. These political actions were in good part defensive.

During the 1880's, in meetings with provincial and federal officials, First Nation leaders demanded treaties that would establish a just relationship. They wanted to guarantee their peoples' possession of their territories for present and future generations. Aboriginal leaders reiterated these demands over the ensuing decades, together with many expressions of willingness to share land and resources with the settlers. The demands went unanswered.

For the most part these demands were made diplomatically and peaceably. First Nations seldom used or threatened direct action. The protest blockade made its appearance at the turn of the century near Fort St. John when armed aboriginals, demanding a treaty, halted the flow of miners to the Yukon. In response, the federal government and several of the First Nations agreed in 1899 to the extension of Treaty 8 westward into that part of British Columbia. The provincial government took no part in this treaty-making, and no treaty with either Canada or British Columbia has been made in the province since that time.

The First Nations remained adamant in their demands for recognition of aboriginal title and the making of treaties. Just as persistently, the federal and provincial governments declined to respond to the aboriginal demands. While some non-aboriginal people supported aboriginal concerns, most of them, particularly at the political level, held the view that aboriginal title had never existed in British Columbia, or that it had been displaced by the activities of the new society and its legal system.

Settlement pressure on agricultural land increased after the turn of the century. The federal and provincial governments agreed in 1912 that a Royal Commission should re-examine the size of every reserve in the province. Despite First Nations' objections, the Commission was given no mandate to consider aboriginal title or treaties. While the Commission did recommend enlargement of some reserves, it advised that much valuable land be cut off from others. Disregarding the Indian Act, as well as assurances from the commissioners that reserve reductions would not be made without First Nations' consent, the governments made these reductions without that consent.

By this time the first province-wide First Nations organization, the Allied Indian Tribes of British Columbia, had been formed to pursue the demands for recognition of title and to secure treaties. Parliament responded with a special joint committee, which held hearings in Ottawa in 1927. The committee dismissed the demands. Parliament amended the Indian Act to make it illegal for Indians to raise or spend money to advance claims. This blocked First Nations from effective political and

court action in pursuit of their rights. The result among the First Nations in British Columbia was a pervasive, and often bitter, frustration.

In 1951 Parliament repealed the provisions of the Indian Act which outlawed the potlatch and prohibited "land claims" activity. Political activity in pursuit of the long-established demands quickly re-emerged in British Columbia. Tribal councils and political organizations became a lively presence during the 1960's. At the end of the decade the Nisga'a went to court, seeking a declaration that they had held aboriginal title to their land prior to colonization, and that their title had never been extinguished. At about the same time the federal government proposed, in a "white paper," that the final steps toward assimilation be taken. Implementation of the proposed policy would make "Indians" cease to exist under Canadian laws.

Offended by the "white paper," and as determined as ever in their demands, aboriginal people turned again to province-wide political activity. The federal government's "white paper" was dropped and in the 1970's the provincial government agreed to reopen the issue of the land which had been cut-off from reserves. In subsequent tripartite negotiations between the First Nations, the provincial and the federal governments, many of these cut–off land issues were resolved.

The outcome of the Nisga'a case was a major turning point. The Supreme Court of Canada ruled that the Nisga'a had held aboriginal title in pre-colonial times, but the judges split evenly

on the question of the continuing existence of that title. In the wake of the decision the federal government adopted a "comprehensive claims policy," and began negotiations with the Nisga'a in 1976. The province maintained its long standing position denying the validity of aboriginal title and did not join in those negotiations.

Direct action by First Nations returned to prominence during the mid-1970's with rallies, sit-ins, and road and rail blockades. These actions were aimed as much at unsatisfactory conditions on the reserves as at the land question. During the 1980's a new round of direct action began, both to assert aboriginal title and, in some cases, to halt specific resource development projects in First Nation territories. In a number of instances court injunctions suspended resource development pending the outcome of disputes over aboriginal title. As well, in response to increasing political activity by aboriginal people at the national level, the Constitution Act, 1982 included provisions which recognized and affirmed aboriginal and treaty rights and called for a First Ministers' conference to address aboriginal constitutional issues. The province continued to deny the existence of aboriginal title, and declined to negotiate with First Nations. The resulting impasse was as unsettling to some non-aboriginal groups and interests as it was dissatisfying to the First Nations.

During the 1970's and 1980's the evolution of First Nation political structures continued. Various forums, councils, and organizations became active at the national and provincial level.

Tribal councils began to emerge across the province as representative, for the most part, of the historic tribal groups. In many cases, it was these tribal councils, rather than their constituent bands or communities, which submitted the formal "land claims" to the federal government. Increasingly, the demand for recognition of the inherent right to First Nation government came to the forefront of the aboriginal agenda. This demand was also put forward to counteract the debilitating effects of dependency.

During the 1980's, largely because of the activities of the local and provincial First Nation organizations, growing public support for aboriginal issues and a series of court decisions in favour of aboriginal people, the provincial government became more responsive to aboriginal concerns. The Ministry of Native Affairs was formed. In 1989 the Premier's Council on Native Affairs was created to meet with First Nations and prepare recommendations to the government on a range of aboriginal issues.

In the summer of 1990 a number of First Nation communities turned again to direct action, typically in the form of the road or rail blockade. They did so to express solidarity with the activities of the Mohawk in Quebec, but equally to emphasize their demands that the provincial and federal governments recognize their inherent aboriginal title and rights and negotiate "land claims" agreements.

In this setting, the Premier's Council on Native Affairs

recommended "that the Government of British Columbia should move quickly to establish a specific process by which aboriginal land claims may be received and placed on the negotiating table". In August, 1990, the provincial government agreed to join the First Nations and the Government of Canada in negotiations, and proceeded immediately to enter the negotiations underway between the Nisga'a and the Government of Canada.

In October, 1990, leaders of First Nations met with the Prime Minister of Canada and then with the Premier and Cabinet of British Columbia urging the appointment of a tripartite task force to develop a process for negotiations. The federal and provincial governments agreed. On December 3, 1990, the task force was established by agreement of the Government of Canada, the Government of British Columbia, and representative leadership of the First Nations. The terms of reference (Appendix 1) call upon the task force to make recommendations on the scope of negotiations, the organization and process of negotiations, interim measures, and public education.

Leaders from First Nations across British Columbia appointed three members to the task force at a meeting called the First Nations Summit. Two members were appointed by the Government of Canada, and two by the Government of British Columbia (Appendix 2 contains a list of the members of the task force). The task force first met on January 16, 1991, and agreed to address the terms of reference by a consensual process. In the course of its deliberations over five and a half months, the task force met with a number of people who were invited to offer

advice based on first-hand experience in similar negotiations (Appendix 3). The task force also considered 17 written submissions received from interested persons and organizations who responded to a province-wide request (Appendix 4).

## New Relationship

As history shows, the relationship between First Nations and the Crown has been a troubled one. This relationship must be cast aside. In its place, a new relationship which recognizes the unique place of aboriginal people and First Nations in Canada must be developed and nurtured. Recognition and respect for First Nations as self-determining and distinct nations with their own spiritual values, histories, languages, territories, political institutions and ways of life must be the hallmark of this new relationship.

To the First Nations, their traditional territories are their homelands. British Columbia is also home to many others who have acquired a variety of interests from the Crown. In developing the new relationship these conflicting interests must be reconciled.

First Nations have been forceful in their demands for the peaceful political resolution of the land question. The public and the courts have made it clear that the matters in contention are properly resolved politically, not by confrontation or violence, and not by resorting to the legal process. Whatever the issues may be, it is crystal clear that any new relationship must be

achieved through voluntary negotiations, fairly conducted, in which the First Nations, Canada, and British Columbia are equal participants.

The negotiations will conclude with modern-day treaties. These treaties must be fair and honourable.

First Nations, exercising their inherent sovereign authority, have a long history of concluding treaties with Canada. But over the years, aboriginal and treaty rights have often not been honoured by the Crown. For a new relationship to be meaningful and lasting the spirit and intent of the treaties must be honoured not by their breach but by full and complete implementation.

Once concluded, these treaties and the rights defined in them are protected under section 35 of the Constitution Act, 1982. They cannot be unilaterally amended. This is a fundamental principle in the new relationship — only those who make the treaty may change it.

In the negotiation of treaties certainty is an objective shared by all. These treaties will be unique constitutional instruments. They will identify, define and implement a range of rights and obligations, including existing and future interests in land, sea and resources, structures and authorities of government, regulatory processes, amending processes, dispute resolution, financial compensation, fiscal relations, and so on. It is important that the items for negotiation not be arbitrarily limited by any of the parties.

The negotiation of treaties will take time. Some disputes are having a debilitating effect on communities or discouraging economic development and cannot wait. Interim measures will be necessary to resolve these disputes and to provide a positive climate for negotiations. These interim agreements may cover issues such as the alienation of land or resources which may eventually be the subject of the treaty negotiations. These should be concluded without prejudice to the treaty negotiations.

Important to the relationship between the Crown and aboriginal peoples is the concept of the fiduciary duty owed by the Crown. This duty is rooted in history and reflects the unique and special place of aboriginal peoples in Canada. The treaty-making process will define and clarify the terms of the new relationship between the Crown and aboriginal peoples but it cannot end the Crown's fiduciary duty. The determination of the extent to which fiduciary duty continues to exist is a matter for the courts.

A well-informed public is important to the overall success of the process. Education and information must be available to ensure the public understands and supports the emerging new relationship.

The task force believes that the process of negotiation to establish a new relationship will be positive for the First Nations and for the citizens of British Columbia and Canada. The status quo has been costly. Energies and resources have been spent in legal battles and other strategies. It is time to put

these resources and energies into the negotiation of a constructive relationship.

**The Task Force recommends that:**

1. **The First Nations, Canada, and British Columbia establish a new relationship based on mutual trust, respect, and understanding—through political negotiations.**

## 2. SCOPE: What the Negotiations Should Include

The development of the new relationship through negotiation is vital to all peoples in the province. These negotiations must deal with the issues of fundamental importance to the relationship. No party can dictate to the other what these fundamental issues are. Consequently, the parties must be free to raise any issue which they view as significant to this relationship. There should be no unilateral restriction by any party on the scope of negotiations.

The imposition of restrictions can only serve to create conflict and detract from the central purpose of the negotiations. Full and frank consideration of all items of importance will contribute to creative and practical solutions. This will be the key to lasting treaties which will foster and sustain the new relationship.

**The Task Force recommends that:**

> **2. Each of the parties be at liberty to introduce any issue at the negotiation table which it views as significant to the new relationship.**

The following list of issues, which will be significant in the negotiation of the new relationship, is offered for guidance only.

## First Nation Government

First Nation government, often referred to as self-government, will be an essential component of a new relationship.

To date, both federal and provincial governments have exercised powers affecting First Nations' interests, often without consultation or consent. When British Columbia joined Confederation in 1871, the federal government assumed legal responsibility over "Indians and lands reserved for Indians". Recent initiatives have marginally increased First Nations' responsibility for programs on reserves. In 1985, the federal government began negotiating agreements which would delegate more administrative responsibility. However, legal authority continues to rest with the federal government.

Treaty negotiations in British Columbia provide an opportunity to recognize First Nation governments on their traditional territories. It is important that the treaties, which will receive constitutional protection, be explicit on matters of jurisdiction. Canada has a rich and diverse history of political structures. First Nations have equally rich traditions. The negotiations must take into account these traditions together with the democratic principles and the rights and freedoms guaranteed by the Canadian Constitution.

The subjects for negotiations will include the powers and responsibilities to be exercised respectively by First Nation, federal and provincial governments, as well as clarification of

the political institutions which will exercise those powers. Jurisdiction may be exercised individually, or shared among the parties. One of the central responsibilities of government is the delivery of services to people. Regardless of where jurisdiction over any particular service may lie after the treaty, the parties must agree on arrangements for its delivery. This issue of services and fiscal relationships to pay for the services is dealt with in later sections of this report.

During the 1980's, at constitutional conferences, First Ministers and First Nation leaders failed to agree to amend the constitution to explicitly affirm self-government as an aboriginal right. Now Canada is embarking on a new round of constitutional discussions. The federal government has announced that it will place aboriginal issues on the constitutional agenda including the amendment of the constitution to explicitly affirm the right of self-government by aboriginal people in all areas of the country. The federal government supports constitutional affirmation of a right to self-government. The success of this initiative may provide a positive constitutional direction for the treaty negotiations in British Columbia. On the other hand, examples of First Nation governments developed in British Columbia treaty negotiations may contribute positively to the national discussions.

These two processes should be considered complementary. National constitutional discussions are a valuable forum for addressing First Nation government. However, the national constitutional process must not interfere with the inclusion of First Nation government in treaties in British Columbia.

Negotiating First Nation government within the treaty process involves important interests of all the parties. Both the federal and provincial governments are concerned about constitutionally protecting agreements which will alter jurisdictions. For First Nations, constitutional protection represents a vital point because it provides certainty on the fundamental issue of First Nation government.

All the parties seek certainty on questions of jurisdiction. They therefore have a mutual interest in negotiating agreements which are workable and will not be vulnerable to unilateral amendment. The negotiation of these important matters should therefore proceed with care, because agreement on First Nation government within the treaty will receive constitutional protection.

## Land, Sea, and Resources

Land, sea, and resources have always been at the centre of contention between First Nations and the federal and provincial governments. Canada and British Columbia exercise authority over the First Nations traditional territories without their consent. This has led to disputes, sometimes erupting into serious confrontations.

For First Nations, hereditary title is the source of all of their rights within their traditional territories. The land, sea and resources have supported their families, communities and governments for centuries, and form the basis of the aboriginal

spiritual, philosophical, and cultural views of the world. Stewardship of the land, sea, and resources is for the First Nations a sacred trust, with immense responsibilities to be exercised, with care and diligence, for the benefit of future generations.

Because of this, the First Nations view land, sea and resources as fundamental components of modern treaties. Fishing, hunting, trapping and gathering continue to be important traditional economic and cultural activities. The land, sea, and resources will also provide the foundation of new economic opportunities for First Nations.

Land, sea, and resources are also of fundamental importance to non-aboriginal people. To the individual, they provide the opportunity to enjoy nature, to participate in recreational activities, to own property, and to build business enterprises. To the provincial economy, they provide business opportunities, jobs, and the revenue that enables governments to provide services. The relationship to the land has also helped to define the character of British Columbia.

These disputes over jurisdiction and ownership of land, sea, and resources have created an unsettling degree of uncertainty. As a consequence, individuals express concern about title to their property. Business enterprises are concerned about the future of their endeavours and new investment is discouraged. For their part, First Nations see their traditional territories being dramatically and, in some cases, permanently altered without their consent.

During treaty negotiations the following specific issues will need to be considered:

1. Certainty of ownership and jurisdiction over land, sea, and resources.

2. Identification of territories and resources over which First Nations have ownership, and those over which they exercise jurisdiction.

3. Coordination of management regimes to ensure efficient and effective resource development, as well as sustaining the land, sea, and resource base for future generations.

4. Implications of changes to ownership and jurisdiction.

Resolution of these issues is critical to the new relationship between aboriginal and non-aboriginal peoples.

## Financial Component

Negotiations will likely include consideration of a financial component to recognize past use of land and resources and First Nations' ongoing interests, and to provide capital for community and economic development. The nature and extent of the financial component will vary depending on the individual circumstances of each First Nation and other terms of the treaty. A standard formula for use throughout the province is not practical.

The financial component could take different forms, such as cash payments, resource revenue sharing, or credit. Payments could be made in either lump sum or instalments. The taxation treatment of these payments should also be considered in the negotiations.

Although recognition of past and current uses is important, detailed calculations would be technically difficult, costly, and time-consuming. The task force encourages the parties to reach a negotiated solution by bargaining with good will and good faith in the determination of compensation.

The allocation of resource revenues offers an opportunity to resolve the issue of financial compensation. At the same time, it could provide an important tool for building First Nations' self-sufficiency in the future and enabling them to benefit from development activities within traditional territories.

### Government Services

As discussed in the section on First Nation government, these negotiations will deal with the jurisdiction for government services. Negotiations will also determine which government will provide each service. Any of the services currently provided by British Columbia or Canada could be the subject of negotiations. These services fall into four major categories: resource management; economic development; social development and human resources; and justice services.

As First Nations have a wide variety of needs and priorities for government services, negotiations will result in a variety of delivery arrangements. First Nations may wish to provide some services, enter into joint management arrangements, or opt into federal or provincial programs. Which arrangements will work best cannot be predicted; experience will ultimately be the best teacher. Therefore, flexible arrangements will likely be in the best interests of all parties.

Changes to responsibilities for services may require the parties to develop a new fiscal relationship. This must take into account both the ability to generate revenue and the cost of service delivery. It will include such topics as taxation, royalties, licencing, and the transfer of funds among the three governments.

Changes in service delivery made after the implementation of the treaty may also require changes to the fiscal relationship. Accordingly, the parties should consider regular reviews to provide appropriate funding.

### Certainty

First Nations and the federal and provincial governments share the common objective of achieving certainty in their relationship, particularly concerning the ownership of and jurisdiction over land and resources. Certainty will create levels of confidence and understanding, and facilitate constructive developments in the political, social, and economic fields.

In the past, blanket extinguishment of First Nations' rights, title, and privileges was used to achieve certainty. The task force rejects that approach. Section 35 of the Constitution Act, 1982 gives express recognition and affirmation to aboriginal and treaty rights. First Nations should not be required to abandon fundamental constitutional rights simply to achieve certainty for others. Certainty can be achieved without extinguishment. The parties must strive to achieve certainty through treaties which state precisely each party's rights, duties, and jurisdiction. The negotiations will inevitably alter rights and jurisdictions. Those aboriginal rights not specifically dealt with in a treaty should not be considered extinguished or impaired.

All parties recognize that treaties arising out of the new process cannot hope to achieve absolute certainty in all areas; they must permit changes as circumstances require. For this reason, treaties must allow for revision and amendment .

## Amendment

The treaties will document the relationship between the parties at one point in time. As this relationship evolves, the treaties must be capable of amendment to accommodate changing circumstances. The need for amendments to the Inuvialuit Settlement Agreement signed as recently as 1984 demonstrates why this flexibility is required. To do otherwise would be to set an unrealistic goal of negotiating a wide-ranging agreement which could stand untouched for all time.

The possibility of amendment to treaties must receive careful attention during the negotiations. Some issues within treaties may lend themselves to revision, while others may not. For example, the parties generally may not want to reopen issues related to land and resource ownership. On the other hand, it may be necessary to review on-going relationship issues such as joint-management arrangements. Therefore the parties must identify topics which will, and will not, be open for amendment, and the method of amendment. They may consider revisiting some provisions on a periodic basis, or on the occurrence of certain events—or not before a certain date.

## Implementation

How the treaty will be implemented must be considered during the negotiations. Experience from other negotiations has shown that if negotiators do not carefully consider the legal and practical aspects of implementation and the implications flowing from the treaty, it will have little chance of meeting its objectives.

The section of the report dealing with stages of negotiation contains recommendations on the timing and organizing of implementation. In setting their overall approach to implementation, the parties may want to consider the following: implementation of sub-agreements prior to concluding the treaty, phased implementation of the treaty, the negotiation of single issue treaties, and the resolution of disputes arising during the implementation of the treaty.

In order to implement a sub-agreement prior to completion of the treaty, it must be sufficiently detailed to stand alone as a workable agreement. It must also specify how it is to be incorporated in the treaty. The parties must pay special attention to the ratification procedure for a sub-agreement to ensure that they have sufficient confidence to implement it.

Early implementation of sub-agreements may provide the parties with an opportunity to demonstrate good faith, build trust and establish a constructive relationship. It may also provide early resolution of an issue which is a source of conflict. Parties must, however, consider whether early implementation will serve as a disincentive to finalizing the treaty. On balance, the advantages of early implementation appear to outweigh the disadvantages.

Parties should develop a timetable for the phased implementation of the terms of the treaty that takes into account the availability of resources and their capacity to implement the treaty in an orderly manner.

Parties may wish to negotiate several less comprehensive or single-issue treaties which may either stand alone or be incorporated in a comprehensive treaty. This would be practical where parties are prepared to ratify and sign a treaty with respect to a limited number of important issues rather than await the negotiation of a comprehensive treaty. Such treaties would allow several First Nations to negotiate together on a single or

limited number of issues should they so choose. As a treaty, such an agreement would be constitutionally protected.

The Parties should also develop a dispute resolution mechanism to resolve disputes about matters of interpretation and implementation.

---

In addition to the foregoing issues, the task force has included in Appendix 5 a list of issues which have been adopted in framework agreements negotiated to date. The parties may wish to consider these and other issues.

## 3. PROCESS: How the Negotiations Should Proceed

The negotiation of treaties to establish a new relationship provides a formidable challenge. The wide range of issues to discuss, from land ownership to First Nation government, complicates the task. As many as thirty separate negotiations may take place, with many occurring at the same time. Although similar solutions may be found to apply to several sets of negotiations, the very different circumstances and histories of the First Nations require careful consideration. Also, the different regional resources and community aspirations of groups within the province, both aboriginal and non-aboriginal, will require specific tailoring of agreements. Taking these regional variations into account, it is unlikely that a single solution can be applied universally.

A review of the results of processes used in similar negotiations in Canada indicates that the process is a critical factor in the successful outcome of negotiations.

First and foremost, the process must be voluntary. Those First Nations who prefer to deal with disputes in other ways have that right. As the negotiations with the Nisga'a continue, the parties to that negotiation may wish to adopt aspects of this process which they find helpful.

The First Nations, Canada and British Columbia want to conclude treaties as soon as possible. However, undue haste may lead to failure. Agreements must be carefully crafted so

that they work, are supported by aboriginal and non-aboriginal people, and stand the test of time.

To achieve successful and lasting agreements, the process of negotiations must embody the following:

### 1. Commitment

No process for negotiations can be successful without the serious resolve and commitment of all three parties to reach agreements. The parties must match their commitment with sufficient resources to support the process.

### 2. Made in British Columbia

To meet the special circumstances of these negotiations, the process must be located and managed here in British Columbia.

### 3. Fair

The process must provide a level playing field for the participants. No party should be at a disadvantage because of the process.

### 4. Impartial

No one party should have control over the process. All three must be equal partners in its man-agement.

**5. Effective**

The process must encourage effective negotiations which are efficient, and avoid creating barriers to progress.

**6. Understandable**

Each party should clearly understand its duties and responsibilities in the negotiation process.

The recommendations which follow set out a process which incorporates the above six elements.

First, and central to these recommendations, is the establishment of a British Columbia Treaty Commission. Its role will be to ensure that the process is fair and impartial, that all parties have sufficient resources to do the job, and that the parties work effectively to reach agreements.

Second, Stages of Negotiations, outlines the six steps in the negotiation process.

Third, there are comments and recommendations on a number of specific process issues which the parties must consider.

## The British Columbia Treaty Commission

To achieve lasting agreements as quickly as possible, the negotiation process must be "Made in B.C.," fair, impartial, effective and understandable. To help meet these objectives, the task force recommends the establishment of the British Columbia Treaty Commission. The commission would be a tripartite organization appointed by the First Nations and the federal and provincial governments.

Based upon the twenty-two claims filed to date under the existing federal comprehensive claims policy, we estimate there could be as many as thirty separate negotiations throughout the province. Therefore, it is essential that the process be controlled and located in British Columbia.

The experience of negotiations in other provinces where only one—or at most two—claims have been negotiated at once, indicates that co-ordination is crucial to an efficient process. Where co-ordination is lacking, resources have been wasted because the parties were not prepared to proceed. In British Columbia, many negotiations will be proceeding at the same time, so the task of co-ordination will be critical.

A British Columbia Treaty Commission, sensitive to the realities in the province, should be given the job of co-ordinating the start of negotiations. This will require extensive communication with all three parties to ensure they are prepared to begin negotiations at the same time. Once negotiations begin,

the parties must assume responsibility for co-ordination of their activities and set their own schedule. The role of the commission would then change to one of monitoring the progress that the parties make toward the targets they have set.

The impartiality and fairness of the process is also critical to its success. The process will be more credible if assisted by a tripartite body appointed by British Columbia, Canada and the First Nations. An important issue of fairness for the First Nations is the question of adequate funding, which will enable the First Nations to negotiate on an equal footing with the governments. The commission should be given responsibility for decisions respecting funding for First Nations.

Because these negotiations are so important to residents of British Columbia and Canada, the commission should be accountable to the governments of Canada, British Columbia and the First Nations. It should publish reports on the effectiveness and fairness of the process, and the progress of each negotiation, and present those reports to the Parliament of Canada, the British Columbia Legislature and the First Nations. Public accountability will be an important tool enabling the commission to keep the parties on schedule and on course.

The onus is on the parties to carry out the negotiations. The commission can assist the process by providing the following services:

1. Co-ordinating the schedule for the start of negotiations;

2. Deciding the amount and distribution of funds required by the First Nations to participate in the process;

3. Determining the readiness of each of the parties to begin negotiations based upon criteria they have agreed to;

4. Encouraging timely negotiations by assisting the parties to establish a schedule and monitoring their progress in meeting deadlines;

5. Identifying the need for and providing dispute resolution services as requested by the parties;

6. Submitting annually to The Parliament of Canada, the Legislative Assembly of British Columbia, and the First Nations, a report on the progress of negotiations and an evaluation of the process;

7. Developing an information base on negotiations to assist the parties;

8. Providing a public record of the status of each negotiation and documents which the parties agree to make public.

As the responsibility for the successful and timely conclusion of negotiations lies with the parties, the commission is not to be directly involved in the negotiations. However, at the invitation of the parties it will be available to assist them in resolving disputes, or by providing services such as an independent chairman or secretariat for the negotiations.

The commission should draw to the attention of the parties their failure to meet agreed target dates, ask why, and report to the parties if major obstacles block progress. Where the commission finds that progress is not being made, it should draw the failure to the attention of the parties and ascertain the reasons. If the parties do not remove obstacles blocking progress, the commission should make public its recommendation to resolve the delay.

From time to time, the commission may meet with British Columbia, Canada and the First Nations to recommend improvements to the process or to seek resolution of similar issues delaying progress in more than one negotiation.

The commission should be made up of a chairperson and four members. The chairperson should be appointed by agreement of the federal and provincial governments and the First Nations. On a five-member commission two of the members (not including the chairperson) should be appointed by the First Nations. If the commission is larger than five members a similar ratio should apply.

The position of chairperson should be full time. Other members should be available on an as-needed basis. The work of the commission should normally be conducted by the chairperson and members rather than by delegation to staff.

A constant theme of this report is the need to move speedily to begin the long process of negotiation. The commission, its structure and its mandate, should be established by agreement between the three principals without delay, by order-in-council if necessary. Federal and provincial legislation, and authority from the First Nations should follow to give the commission a strong mandate.

It is important to the impartiality of the commission that both the federal and provincial governments contribute to its funding. Secure long-term funding for the operations of the commission and First Nations participation in the process will give all the parties confidence in the commission and the process. A commission which must constantly seek funding or protect its funding sources will be distracted from its task.

The commission should assist the parties to reach a successful and timely conclusion of the negotiations. It should not add unnecessary bureaucracy to the process and not impede progress. The three principals should review the commission's effectiveness after a three year period.

**The Task Force recommends that:**

3. **A British Columbia Treaty Commission be established by agreement among the First Nations, Canada, and British Columbia to facilitate the process of negotiations.**

4. **The Commission consist of a full-time chairperson and four commissioners—of whom two are appointed by the First Nations, and one each by the federal and provincial governments.**

## Stages of Negotiation

The proposed stages of negotiations are designed to assist the parties to progress rapidly, without compromising the goal of achieving lasting agreements. As the parties become experienced in negotiations they may discover—and are encouraged to adopt—innovative ways to improve the process.

Prior to or in the early stages of negotiations, there may be issues which require the urgent attention of the parties. These matters should be resolved in interim measures agreements.

**The Task Force recommends:**

**5. A six-stage process for negotiating treaties, as follows:**

**Stage 1:** Submission of Statement of Intent to negotiate a treaty

The negotiation process will begin when a First Nation sends a Statement of Intent to negotiate a treaty to the commission. The commission will forward the Statement of Intent to the federal and provincial governments and acknowledge its receipt to the First Nation.

The Statement of Intent need only be a short and succinct document. Its preparation does not need to be supported by extensive research and consultations. Its purpose is to indicate the intention of the First Nation to enter into treaty negotiations. It will also provide basic information to enable the commission and the federal and provincial governments to begin preparations for the negotiations.

The Statement of Intent should identify the following:

1. The First Nation;
2. The general geographic area of the First Nation's traditional territory;
3. A formal contact for communication.

The First Nation may choose to submit a preliminary list of issues which it believes will be important to the negotiations.

At the time the First Nation files its Statement of Intent, it should also file with the commission any requirement it has for funding. The commission will meet with the First Nation to consider its funding needs.

Alternatively, First Nations who have already filed submissions under the current federal comprehensive claims policy may send these to the commission and indicate that they intend to rely on them as their Statement of Intent.

**Stage 2:** Preparation for negotiations

When the commission receives the Statement of Intent, it will give written notice to the three parties, convening a meeting within 45 days. At this meeting, the parties will formally commit themselves to negotiate a treaty.

This meeting will provide the parties and the commission with an opportunity to exchange information, consider the criteria to be used to determine the parties' readiness to negotiate, discuss background studies any of the parties intends to carry out in preparation for the negotiations, and identify in a general way issues to be negotiated. In consultation with the commission, the parties will also set a date for the first Framework Agreement negotiating meeting.

Prior to the date of the first Framework Agreement negotiation meeting, the commission will communicate with the parties to ascertain their readiness to begin negotiations, based upon criteria agreed to by the parties. The commission has the responsibility of assessing whether or not the parties are sufficiently ready to begin negotiating. The parties are expected to cooperate with the commission in this assessment. The commission must ensure that there is no delay of the process, but also ensure that negotiations do not begin until all the parties are adequately prepared. If the parties are ready, the commission will confirm the start date for the negotiation of the Framework Agreement. If one or more of the parties are not ready, the commission will ask them to set a new date.

The following criteria for readiness are suggested:

1. A First Nation is "ready" when it has identified subject matters to be negotiated, it has consulted its communities, established an organization sufficient to support the negotiations, and adopted a ratification procedure. A First Nation should also have identified and begun to address any overlapping territorial issues with neighbouring First Nations. It is not a requirement that overlap issues be resolved prior to negotiations.

2. The federal and provincial governments are "ready" when each has identified the subject matters it wishes to include in negotiations, has established a mecha-

nism for consultation with non-aboriginal interests, has researched the background of the communities, people, and interests likely to be affected by the negotiations, and has adopted a ratification procedure.

3. Each of the parties must confirm to the commission that it has appointed negotiators and has given them a comprehensive and clear mandate, and has sufficient resources to carry out the negotiations.

Parties are encouraged to meet with the commission at any time, but particularly during this stage, to discuss matters which will expedite the process.

**Stage 3:** Negotiation of Framework Agreement

A Framework Agreement is a negotiated agenda which:

1. Identifies the subjects for and objectives of the negotiations; and

2. Establishes a timetable and any special procedural arrangements for the negotiations.

This will enable the commission and the parties to evaluate the progress of negotiations. In addition, it will enable the parties to confirm, modify or expand their negotiators' mandates.

Identification of the parties' ratification, and implementation procedures must be considered in the course of the Framework Agreement negotiations. The parties should adopt a dispute resolution procedure and undertake a program of public information, for use during the entire period of negotiations.

Appendix 5 contains a list of items included in Framework Agreements negotiated to date.

While interim measures agreements can be raised at any time, the parties should consider the need for them prior to concluding the Framework Agreement.

**Stage 4:** Negotiation of Agreement in Principle

During this stage the parties reach the major agreements which will form the basis of the treaty. The Agreement in Principle is the product of a thorough and detailed examination of the issues on the agenda, as set out in the Framework Agreement. It should contain the salient points of the agreement between the parties. The parties must again confirm the process for ratification and establish a mechanism to develop an implementation plan.

The ratification process of the Agreement in Principle provides the parties with the opportunity to:

1. Review the emerging agreement and approve, reject or seek amendment of its provisions;

2. Provide their negotiators with a mandate to conclude a treaty.

**Stage 5:** Negotiation to finalize a treaty

The treaty will formally embody the principles which underpin the new relationship and the agreements reached in the Agreement in Principle. It will also provide the implementation plan by which the parties will give effect to the agreements. A separate working group may be required to prepare for implementation, including such matters as the timing and funding of implementation and the responsibilities of each party.

The resolution of technical and legal issues in the settlement of the terms of the treaty should not be used as an opportunity to re-open issues already settled. A balance must be maintained between the need to deal with substantive amendments and the undermining of the Agreement in Principle.

On the completion of negotiations the treaty will be formally ratified and signed.

**Stage 6:** Implementation of the treaty

While the task of the negotiators is now complete, the work of establishing the new relationship continues. Implementing legislation or authorities may be required by each of the parties. The implementation of the treaty will require continuing goodwill, commitment and efforts on the part of all the parties.

**Access**

In the interests of developing a new relationship, this negotiating process must be open to all First Nations in British Columbia.

While the majority of British Columbia's First Nations have never signed treaties, fourteen treaties covering territory on Vancouver Island, known as the "Douglas Treaties", were signed prior to the entry of British Columbia into Confederation and Treaty 8 covers territory in the north-eastern corner of the province. The existence of these treaties should not exclude First Nations from the negotiation process. Not only are there questions concerning the making of these treaties, their interpretation and their implementation, but more importantly, the new relationship will encompass a wider range of issues than do these treaties. While the existence of these treaties will be taken into account in negotiations, these First Nations should not be excluded by reason of these early attempts at defining their relationship.

Urban areas now cover parts of the traditional territories of some First Nations. Sometimes referred to as "superseded by law," this must not bar those First Nations from the negotiations. To do so would be contrary to the spirit and intent of these recommendations.

**The Task Force recommends that:**

> **6. The treaty negotiation process be open to all First Nations in British Columbia.**

## Organization of First Nations

Understanding the traditional and modern-day organization of First Nations in the province poses a considerable challenge for non-aboriginal people. In the first place, many impressions are based upon superficial exposure to aboriginal people and lifestyles. Secondly, there is little in the non-aboriginal experience that directly relates to aboriginal values and perspectives.

Traditionally, many First Nations organized their societies through houses or "clans," which preserved their authority through complex variations of matrilineal or patrilineal systems. These traditional governments exercised control over vast territories. They also formed the basis for larger political units, often referred to as tribes or nations.

After British Columbia entered Confederation, Canada began to impose the band council system. The traditional governments and their ability to exercise authority over territories were discouraged, and at times outlawed. Today, these tradi-

tional governments exist side-by-side with the band council system.

Also, political alliances have been forged among "tribal councils". These have been very effective in initiating constitutional changes and modifying federal and provincial laws and policies. Tribal councils will likely continue into the future.

The term "First Nation" may refer to an organization of aboriginal people under the traditional government, the tribal council, the band or some combination of these systems.

Two major questions for a new process are, "How should First Nations organize themselves for negotiation purposes?" and "What are the advantages and disadvantages of different organizational structures?"

Answers to these questions must not ignore a fundamental principle: for First Nations the decision to ratify a treaty will come from their people. It is essential that the same people who will ratify the treaty support the organization which is negotiating on their behalf. The manner in which First Nations organize and structure themselves for treaty negotiations must be left to them to decide.

In making this decision, many factors such as language, the history of relations between communities, and the influence of natural boundaries and geography will play a role. Other considerations will include sharing of resources and costs, and

developing more effective co-ordination between jurisdictions which a larger grouping allows. First Nations will also want to consider that the larger the territory covered by an organization the more difficult and expensive it will be for the First Nation negotiators to communicate effectively with its members.

The federal and provincial governments must recognize that this decision will not be easy for First Nations.

In the late 1960's and early 1970's the federal government urged bands in B.C. to group together to pursue a collective approach to "land claims negotiations". Province-wide organizations were formed. Negotiations never materialized and the insistence on establishing a province-wide aboriginal organization was discontinued. Resurrecting this approach for the purpose of negotiating treaties is impractical and doomed to failure.

To date, the majority of "claims" presented for negotiation under the federal claims process have been organized at the tribal council level. The Nisga'a and the Council for Yukon Indians provide two quite different examples of how negotiations can be structured around larger groupings.

Whatever the decision, it will be important to the successful outcome of the negotiations that the people of the First Nations have made their own choice. A clear decision, a strong mandate for the organization and its negotiators, and effective communications will enhance the prospects of reaching agreement, ratifying and implementing the treaty.

**The Task Force recommends that:**

> **7. The organization of First Nations for the negotiations is a decision to be made by each First Nation.**

## Overlapping Territories

In many instances, traditional territories of First Nations overlap one another. To the extent that these overlaps may affect negotiations, it is the responsibility of First Nations to resolve them.

Preparation for negotiations must include discussions with neighbouring First Nations on the issue of overlapping territories. Because treaties will identify specific territories, it is not necessary to settle such issues prior to beginning the negotiations, but a process for resolution should be in place before conclusion of the treaty. In exceptional cases, the parties may agree to implement the provisions of a treaty in all but the disputed territory.

The commission, where requested by First Nations, will provide advice on dispute resolution services available to resolve overlap issues. It should be noted that First Nations may require funding from the commission to carry out the necessary studies to assist in resolving overlaps.

**The Task Force recommends that:**

> **8. First Nations resolve issues related to overlapping traditional territories among themselves.**

**Timeframes**

Negotiating treaties with all First Nations in British Columbia must be considered a matter of urgency by all the parties. The resolution of these issues is too important to delay. The federal and provincial governments must be prepared to begin negotiations as soon as First Nations are ready. No limit should be placed upon the number of negotiations ongoing at one time.

There is no question that conducting the number of negotiations that may be required at one time will call for a substantial commitment of resources by all the parties. For this reason, the process which has been recommended provides for coordination to start negotiations.

**The Task Force recommends that:**

> **9. Federal and provincial governments start negotiations as soon as First Nations are ready.**

## Non-Aboriginal Interests

The federal and provincial governments face a major challenge in properly representing the full range of non-aboriginal interests in negotiations. As the treaties will cover a variety of political, economic and social issues, as well as the ownership of and jurisdiction over land, sea, and resources, they will significantly affect British Columbians, and other Canadians.

A wide range of groups want to participate in the development of treaties with First Nations. This interest should be encouraged. If treaties are to establish a workable new relationship, it is essential that these groups have the opportunity to contribute to their development. To achieve this, the federal and provincial governments must establish effective ways of consulting with non-aboriginal interest groups.

In the past, non-aboriginal interest groups have been critical of the federal and provincial governments for not consulting

them or for not keeping them adequately informed during negotiations. This has led to demands for a place at the negotiating table, or for the opportunity to observe negotiations. The task force sees these arrangements as impractical. They may impede progress in negotiations. At the Framework Agreement stage, the parties may wish to consider special procedural arrangements to involve non-aboriginal interests during the negotiations.

**The Task Force Recommends that:**

> **10. Non-aboriginal interests be represented at the negotiating table by the federal and provincial governments.**

## Funding for Negotiations

The provision of adequate funding for federal and provincial government and First Nation participation in negotiations is critical to the success of the process.

The importance of First Nations being able to prepare for and carry out negotiations on an equal footing with the federal and provincial governments has been emphasized throughout this report. This can only be achieved if First Nations have adequate resources available to them. Agreements which are

negotiated without proper preparation will lead to further disputes, delays and wasting of resources. It is also important that First Nations are free to plan and manage their own negotiations. First Nations should not have their expenditures reviewed by another party to the negotiations, as is presently the case.

The needs and circumstances of First Nations will vary considerably. They will be influenced by such factors as their current degree of readiness, availability of resources and expertise, diversity of membership, travel requirements, and experience in negotiations.

The task force reviewed various options, including grants and loans, to support First Nations involvement in the negotiations. A system of payments to support this involvement which does not penalize First Nations or put them at a disadvantage is important. The task force therefore supports the development and implementation through thecommission of a new system of financial support. The parties may wish to review this matter in the negotiation of the financial component.

The commission and the First Nations should together work out the details of the accountability of First Nations to the commission for the funds. The commission should not set priorities on behalf of the First Nations. First Nations will be accountable to their own people for the specific expenditures.

In the development of the new relationship, the federal and provincial governments may be required to make significant

changes in jurisdictions, rights, and services. It is therefore essential that all the options are carefully analyzed, and the impact of positions well understood. This will require the commitment of substantial resources throughout the federal and provincial government structures to ensure that there is adequate consultation and development of new government positions. For these reasons it is important that the federal and provincial government negotiating efforts be adequately funded.

The funding of the commission, public information and the implementation of treaties are equally critical, but are dealt with in their respective sections of this report.

**The Task Force recommends that:**

**11. The First Nation, Canadian, and British Columbian negotiating teams be sufficiently funded to meet the requirements of the negotiations.**

**12. The commission be responsible for allocating funds to the First Nations.**

## Ratification

Each party's process of ratification must be dealt with in the negotiations for the Framework Agreement and reviewed at the Agreement in Principle stage.

Parties must understand each other's ratification procedure and be confident that agreements reached at each stage in the process have been fully considered and approved, and that the treaty will be binding once it is ratified. It would be unfortunate to reach the treaty stage only to find that ratification of some earlier stage was incomplete, thus undermining support for the treaty.

First Nations may have different ratification procedures reflecting their distinct political organizations. As well, there may be a need for different ratification procedures at each stage in the negotiation process.

**The Task Force recommends that:**

> **13. The parties develop ratification procedures which are confirmed in the Framework Agreement and in the Agreement in Principle.**

**Dispute Resolution**

When disputes arise in the course of negotiations, it is the responsibility of the parties to resolve them. In the event of a continuing dispute, any one of the parties may invite the commission to offer suggestions or discuss the issue with the parties.

Where all the parties agree, the commission may provide them with assistance or make recommendations with respect to dispute resolution.

**The Task Force recommends that:**

> **14. The commission provide advice and assistance in dispute resolution as agreed by the parties.**

## Negotiators

Skilled and experienced negotiators with clear mandates will play a key role in the success of the negotiations.

Recognizing the importance of this role, the parties should recruit, train and develop negotiators. Some negotiators may require training to develop their skills and to familiarize themselves with the substantive issues. A number of British Columbia institutions can provide this training.

Canada, British Columbia and the First Nations should undertake joint training programs and investigate modern techniques for negotiations and dispute resolution. These programs and techniques should be available to the parties.

Parties must understand each other's ratification procedure and be confident that agreements reached at each stage in the process have been fully considered and approved, and that the treaty will be binding once it is ratified. It would be unfortunate to reach the treaty stage only to find that ratification of some earlier stage was incomplete, thus undermining support for the treaty.

First Nations may have different ratification procedures reflecting their distinct political organizations. As well, there may be a need for different ratification procedures at each stage in the negotiation process.

**The Task Force recommends that:**

> **13. The parties develop ratification procedures which are confirmed in the Framework Agreement and in the Agreement in Principle.**

**Dispute Resolution**

When disputes arise in the course of negotiations, it is the responsibility of the parties to resolve them. In the event of a continuing dispute, any one of the parties may invite the commission to offer suggestions or discuss the issue with the parties.

Where all the parties agree, the commission may provide them with assistance or make recommendations with respect to dispute resolution.

**The Task Force recommends that:**

> **14. The commission provide advice and assistance in dispute resolution as agreed by the parties.**

## Negotiators

Skilled and experienced negotiators with clear mandates will play a key role in the success of the negotiations.

Recognizing the importance of this role, the parties should recruit, train and develop negotiators. Some negotiators may require training to develop their skills and to familiarize themselves with the substantive issues. A number of British Columbia institutions can provide this training.

Canada, British Columbia and the First Nations should undertake joint training programs and investigate modern techniques for negotiations and dispute resolution. These programs and techniques should be available to the parties.

Negotiators must have clear instructions and sufficient authority to negotiate effectively. As well, they will require the confidence of the party they represent. They should be sufficiently informed, and sensitive to the issues, to gauge accurately the likelihood of the parties approving agreements they endorse.

Federal and provincial negotiators must have direct and timely access to the relevant senior officials and cabinet ministers. Most importantly, they must represent their government as a whole—not just one ministry or department. It may be helpful for the federal and provincial governments to each establish a cabinet committee to provide overall direction to the negotiators. The committees should be composed of the minister responsible for negotiations and other ministers directly responsible for the issues which will be dealt with during negotiations.

For their part, First Nation negotiators also must have direct and timely access to their leadership, and maintain contact with the communities they represent.

**The Task Force recommends that:**

**15. The parties select skilled negotiators and provide them with a clear mandate, and training as required.**

A fair and impartial process that is effective and understandable is essential to successful treaty negotiations. The treaty commission is the key to meeting these criteria. A six-stage negotiating process is recommended. Comments and recommendations are provided on a number of specific issues. This is a new era and experience will help to refine and improve the negotiating process.

## 4. INTERIM MEASURES AGREEMENTS

Treaty negotiations in British Columbia are likely to take some time. Therefore, the parties must balance their conflicting interests until these negotiations are concluded. One method is the use of interim measures agreements.

Interim measures agreements are an important early indicator of the sincerity and commitment of the parties to the negotiation of treaties. To protect interests prior to the beginning of negotiations, the federal and provincial governments must provide notice to First Nations of proposed developments in their traditional territories and, where required, initiate negotiations for an interim measures agreement. This issue is of particular interest to First Nations because, as was outlined in the historical background, the current legislative framework does not protect aboriginal interests in any meaningful way.

Interim measures agreements may affect the management and use of lands, sea, and resources and the creation of new interests. They may facilitate the access to and development of resources, often a useful means of dealing in a preliminary or experimental way with a contentious issue, or provide transition to implementation of the treaty.

These interim measures agreements are not intended as substitutes for the terms of the treaty. The parties must be careful that the negotiation of these agreements does not displace the negotiations toward a treaty.

Settlement of an interim measures agreement shall not limit the scope of negotiations, nor preclude any party from advancing propositions in the negotiations which are different from the agreement.

The range of options for interim measures agreements includes:

1. notification to affected parties before action is taken concerning matters which are or may be the subject of negotiations;
2. consultation with parties affected by any proposed action;
3. consent of one of the parties before action is taken;
4. joint management processes requiring consensus of all the parties;
5. restriction or moratorium on the alienation of land or resources.

The option must fit the circumstances. The proper way to achieve this is through negotiations.

Negotiations on interim measures will often occur at the Framework Agreement stage. However, any party must be able to initiate the negotiation of an interim measures agreement at any time. This is especially important in the case of those First Nations who are not ready to negotiate Framework Agreements.

In resource sectors, the uncertainty caused by unresolved issues affects the management of the resource and the stability of the industry. To protect the First Nations and all others having an interest in the resource, the parties should consider negotiation of sector wide interim measures agreements. These could be negotiated on a regional or province wide basis.

The implementation of interim measures agreements may require changes in existing policies, legislation and regulations. Where existing legislation or regulations are a barrier to interim measures agreements, the provincial and federal governments are urged to enact enabling legislation or regulations which will give effect to such agreements including those authorizing resource management arrangements not contemplated in current legislative or regulatory schemes.

**The Task Force recommends that:**

**16. The parties negotiate interim measures agreements before or during the treaty negotiations when an interest is being affected which could undermine the process.**

## 5. PUBLIC EDUCATION AND INFORMATION

The negotiation of treaties in British Columbia will be one of the most significant initiatives in the province in the 1990's. It is essential to the success of this initiative that the negotiations be conducted in an atmosphere which will contribute to the development of a new relationship between the aboriginal and non-aboriginal people of British Columbia. In large measure the atmosphere will depend on the public awareness and the understanding of the history of British Columbia, and the dissemination of accurate information about the negotiations.

History is important to the First Nations' approach to treaty negotiations. They trace their rights as independent and self-governing First Nations to the times before contact with Europeans. They point out how through history Canada and British Columbia have failed to react to their demands for recognition. Unfortunately, most people in the province have little knowledge of this history; without it, they will have difficulty understanding the First Nations' perspective and the underlying need for a new relationship.

First Nations have cultures based on beliefs and values that are fundamentally different from those of most Canadians. This results in different patterns of communication. Often what is intended in one culture is misunderstood in the other. Throughout the province, both aboriginal and non-aboriginal groups have undertaken initiatives to increase public awareness and knowledge of aboriginal people, their culture, and their

history. Canada, British Columbia, and the First Nations should encourage these and other initiatives to improve communication.

The new relationship will bring about changes. In the absence of a program of public information and education, there will be unnecessary apprehension and resistance.

First Nations, Canada, and British Columbia approach the negotiations from differing perspectives. Each may provide information on its own point of view. However, there is value in a joint program of public information and education so that common understandings of interests and perspectives can be widely shared. In this way the people of British Columbia will be better able to assess the implications and merits of the new relationship and contribute to its realization.

**The task force recommends that:**

> **17. Canada, British Columbia, and the First Nations jointly undertake public education and information programs.**

**Public Information**

Presentations made to the Task Force by those involved in other negotiations emphasized the importance of tripartite information about the negotiation process in general as well as for

each negotiation. We were told that it takes much longer to produce tripartite than one-party information. However, this extra effort provides consistent information from the three parties to the communities concerned. As building the new relationship will require aboriginal and non-aboriginal people to understand each other and to work together, the effort of all negotiators to meet with communities affected by the negotiations will pay significant dividends.

Use of media provides a good means of communicating information, but face-to-face meetings can provide a level of understanding that is deeper and more lasting. Negotiators for each treaty should explore creative ways to allow aboriginal and non-aboriginal people to meet to discuss their perceptions, concerns and hopes for the future. Such meetings could do much to create understanding and to minimize fear about change or the unknown.

**The task force recommends that:**

> **18. The parties in each negotiation jointly undertake a public information program.**

**Public Education**

Recent initiatives to increase curriculum content on First Nation issues and to involve more aboriginal people in all phases of the education system must be expanded and accelerated.

There is a need for resource materials dealing with the history of First Nations in British Columbia and the development of the negotiation process to be made available to the schools in British Columbia and to the public without delay. To accomplish this, British Columbia, the First Nations and Canada should seek the assistance and advice of the First Nations Education Secretariat, the Ministry of Education, the Ministry of Advanced Education, Science and Technology, the British Columbia Teachers' Federation, and the British Columbia School Trustees Association.

**The Task Force recommends that:**

**19. British Columbia, Canada, and the First Nations request the First Nations Education Secretariat, and various educational organizations in British Columbia, to prepare resource materials for use in the schools and by the public.**

## 6. CONCLUSION

Representatives of the First Nations, British Columbia and Canada, working together, have produced in this report recommendations which we believe will contribute to the success of treaty negotiations in British Columbia. To implement the recommendations, the task force urges Canada, British Columbia and the First Nations to take the following steps:

1. Following their expeditious reviews of the report, to meet as soon as possible to confirm their acceptance of the task force's recommendations;

2. As a first priority and in the interest of the early start of negotiations, to create the British Columbia Treaty Commission, provide for its authority and funding, and appoint its members; and

3. To implement the remainder of the recommendations.

## APPENDIX 1

## THE BRITISH COLUMBIA CLAIMS TASK FORCE
## TERMS OF REFERENCE

1.0 Membership:

.1 Initial members may be nominated to the task force as follows;

Two persons nominated by the Government of British Columbia;
Two persons nominated by the Government of Canada;
Two persons nominated by the First Nations Congress;
One person nominated by the Union of British Columbia Indian Chiefs

.2 All members must be nominated by the principals by January 1, 1991.

.3 Responsibility to chair the group will rotate among the members.

.4 The task force members will determine how they wish to communicate publicly on their activities.

.5 The task force will be supported by a small administrative staff.

2.0 Responsibilities of the Task Force:

.1 The task force shall define the scope of negotiations, the organization and process of negotiations including the time frames for negotiations; the need for and value of interim measures and public education.

.2 The task force may consult with individuals and groups that can provide information and advice required for the preparation of this report.

.3 The costs of the task force will be shared equally by the three parties, being the two governments and the B.C. Indians.

.4 The task force shall complete its work within six months of being appointed.

.5 Upon receipt of the report of the task force, the parties will forthwith take such steps as are necessary to seek approval of its contents.

December 3, 1990

Government of Canada

Tom Siddon
Minister, Indian Affairs
and Northern Development.

Government of B.C.

Jack Weisgerber
Minister of Native Affairs.

Indians of B.C.

Bill Wilson
Chairman
First Nations Congress

## APPENDIX 2

## MEMBERS OF THE TASK FORCE

Murray Coolican

Murray Coolican is President of Eastern Forestry Resources and The Outdoor Land Company. He is a former Chairman of the Task Force to review Federal Comprehensive Land Claims Policy and former Executive Director of Canadian Arctic Resources Committee. He is a member of the Nova Scotia Round Table on the Environment and Economy and Director of the Royal Geographic Society.

Chief Edward John

Chief Edward John, lawyer, is an Hereditary Chief of Tl'azt'en Nation. He has been elected to Tl'azt'en Nation Council as councillor, and has served as Chief since 1974. He is past Tribal Chief of the Carrier Sekani Tribal Council, and served and continues to serve on numerous First Nations and non-aboriginal organizations and businesses.

Chief Joe Mathias

Chief Joe Mathias, hereditary chief of the Squamish Nation, North Vancouver, B.C., has been an active member of the Band Council since 1967, when he was elected by acclamation. He holds portfolios in "Constitutional Issues" and "Land Claims".

Chief Mathias sits on various boards, committees, and working groups at the Regional level. From 1985 to 1990 he was B.C. Regional Vice-Chief of the Assembly of First Nations. Chief Mathias has been involved with the Assembly of First Nations Constitutional Working Group, and was a member of the 1985 Task Force to Review Comprehensive Claims Policy.

Miles G. Richardson

Miles G. Richardson is a citizen of the Haida Nation. He grew up among his people on Haida Gwaii, attended high school in Prince Rupert, British Columbia, and in 1979 received a Bachelor of Arts in Economics from the University of Victoria. Since 1984 he has served as President of the Council of the Haida Nation.

Tony Sheridan

Tony Sheridan is the Assistant Deputy Minister of Native Affairs. He was Chairman of the Provincial Steering Committee on Native Justice. He has worked for the Provincial Government for 29 years, primarily in the Ministry of the Attorney General. There he held a variety of positions, including those of Assistant Deputy Minister for Court Services, and for Corrections.

Audrey Stewart

Audrey Stewart is Director, British Columbia Claims, in the federal Department of Indian Affairs and Northern Develop-

ment. She has managed a National Park, worked in regulation of the oil industry, settled specific claims with Indians, and represented Canada in comprehensive claim negotiations with the Labrador Inuit. She is responsible for preparing for federal participation in negotiations in British Columbia.

Allan Williams

Allan Williams is a Vancouver lawyer. From 1976 to 1983 Mr. Williams was the Minister of Labour and Attorney General for British Columbia and the Minister responsible for Native Affairs.

## APPENDIX 3

## PEOPLE WITH WHOM THE TASK FORCE CONSULTED

Nisga'a Tribal Council: President Alvin McKay, Chairman Joe Gosnell and legal counsel Jim Aldridge

E. Anthony Price, Lawyer, Consultant on Native Affairs

Paul Okalik, Tungavik Federation of Nunavut.

Ovila Gobeil, Senior Negotiator, Comprehensive Claims Branch, Indian and Northern Affairs Canada.

Harry LaForme, Indian Commissioner of Ontario

Ian Potter, Director General Comprehensive Claims, Indian and Northern Affairs Canada.

## APPENDIX 4

## PEOPLE AND ORGANIZATIONS WHO MADE WRITTEN SUBMISSIONS

Carrier Sekani Tribal Council.

Coast Salish Nation.

The First Nations of South Island Tribal Council.

Fisheries Council of British Columbia.

Fort George Band.

Gillie, Mavis M.

Heiltsuk Band Council.

Hibbs, Wayne.

Interior Logging Association.

Lowe, Richard J.

Mid-Island Tribal Council.

Musgrove, Mark H.

Oweekeno-Kitasoo-Nuxalk Tribal Councils.

Project North.

Squamish Nation.

United Northern Citizens of B.C. Smithers Branch.

Unrau, Norman.

## APPENDIX 5

## ISSUES IN FRAMEWORK AGREEMENTS TO DATE

- Access
- Amendment procedure
- Approval and ratification process
- Beneficiary organizations
- Certainty and finality
- Claims of other aboriginal peoples/overlapping claims
- Communication, consultation
- Compensation/cost of settlement
- Constitutional matters
- Direct and indirect taxation
- Dispute resolution process
- Economic development
- Eligibility and initial enrolment procedure
- Environmental issues
- First Nation government
- Funding
- Government programs
- Implementation
- Interim protection measures
- Lands/territory
- Language, culture, archaeology and heritage
- Objectives
- Offshore areas and ocean management
- Parties
- Public awareness/information

- Renewable and non-renewable resources (including wildlife, flora and fisheries)
- Signatories
- Social development
- Steps in negotiations
- Target dates/schedule
- Traditional activities: hunting, fishing, trapping, gathering
- Working methods

## APPENDIX 6

## RECOMMENDATIONS OF THE BRITISH COLUMBIA CLAIMS TASK FORCE

**The Task Force recommends that:**

1. **The First Nations, Canada, and British Columbia establish a new relationship based on mutual trust, respect, and understanding—through political negotiations.**

2. **Each of the parties be at liberty to introduce any issue at the negotiation table which it views as significant to the new relationship.**

3. **A British Columbia Treaty Commission be established by agreement among the First Nations, Canada, and British Columbia to facilitate the process of negotiations.**

4. **The Commission consist of a full-time chairperson and four commissioners—of whom two are appointed by the First Nations, and one each by the federal and provincial governments.**

5. **A six-stage process be followed in negotiating treaties.**

6. **The treaty negotiation process be open to all First Nations in British Columbia.**

7. **The organization of First Nations for the negotiations is a decision to be made by each First Nation.**

8. **First Nations resolve issues related to overlapping traditional territories among themselves.**

9. **Federal and provincial governments start negotiations as soon as First Nations are ready.**

10. **Non-aboriginal interests be represented at the negotiating table by the federal and provincial governments.**

11. **The First Nation, Canadian, and British Columbian negotiating teams be sufficiently funded to meet the requirements of the negotiations.**

12. **The commission be responsible for allocating funds to the First Nations.**

13. **The parties develop ratification procedures which are confirmed in the Framework Agreement and in the Agreement in Principle.**

14. The commission provide advice and assistance in dispute resolution as agreed by the parties.

15. The parties select skilled negotiators and provide them with a clear mandate, and training as required.

16. The parties negotiate interim measures agreements before or during the treaty negotiations when an interest is being affected which could undermine the process.

17. Canada, British Columbia, and the First Nations jointly undertake public education and information programs.

18. The parties in each negotiation jointly undertake a public information program.

19. British Columbia, Canada, and the First Nations request the First Nations Education Secretariat, and various educational organizations in British Columbia, to prepare resource materials for use in the schools and by the public.